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United States

OCTOBER TERM, 1947

GILES KAVANAGH, Collector of Internal Revenue, *Petitioner*, vs. J. H. NOBLE, *Respondent.*	No. 70
H. C. JONES, Collector of Internal Revenue, *Petitioner*, vs. THE LIBERTY GLASS COMPANY, *Respondent.*	No. 71

BRIEF OF REGINALD S. LAUGHLIN, AMICUS CURIAE.

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Amicus Curiae.

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The undersigned is attorney for the appellants in case No. 11,651 now pending in the United States Circuit Court of Appeals for the Ninth Circuit entitled *"Suzanne FitzGerald Fawcett, et al. v. United States of America"*. The case involves an application for refund of a tax imposed on a dividend declared

on stock owned by decedent within one year after the death of the decedent. Such a tax was unqualifiedly held to be unauthorized by the Estate Tax Act.

Maass v. Higgins, 312 U. S. 443, 85 L. Ed. 940.

It was also held by the Circuit Court of Appeals of the Sixth Circuit in *In re Tindle's Estate*, 59 F. Supp. 667, 152 F. (2d) 757, not to be a tax "imposed by" the Estate Tax Act within the meaning of 26 U.S.C.A., Section 910, and therefore recoverable within four years under 26 U.S.C.A., Section 3313, the Court saying:

> "The refund was rather for a refund sought to be imposed as an estate tax, but held by the Supreme Court not to have been levied at all under the statute in question."

The government did not ask for a review of that decision and it is not directly before the Court in the above-entitled cases.

We do not wish in any way to argue the question as to the nature of the taxes involved in the cases now actually before the Court, as we know they will be adequately presented by counsel, but we are filing this brief because of the possibility that the Court's decision might throw some uncertainty on the correctness of the decision in *In re Tindle's Estate*, supra, on which we relied in presenting the claim for refund within four years and in which the government did not seek a review by this Court.

We feel that the failure of Congress to amend the law so as to avoid the interpretation made in *In re*

Tindle's Estate amounts to a legislative approval thereof.

The tax was not an estate tax and was not a tax "imposed by" the estate tax statute and might as well have been called a dividend tax, an income tax, a capital stock tax, an excise tax or any other type of tax rather than an estate tax.

The Honorable District Judge in the case of *Fawcett v. United States of America* based his decision largely on the fact that this Court in *Rosenman v. United States,* 323 U. S. 658, referred to Section 910 as the statute applicable to claims for refund of taxes imposed by the estate tax statute. We have no quarrel with that statement because the question here is whether this particular exaction was so imposed. However, in that case there was no question raised as to whether that statute or the four-year statute was applicable to the particular case before the Court. As a matter of fact, in that case the claim for refund was made within three years after the tax was paid and therefore there was no question raised or involved as to which statute was applicable. The only question actually involved in the case was the erroneous claim made by the government that the tax was actually paid many years before the payment was credited on the tax, when a deposit was made on account of the tax. This contention of the government was held to be unfounded and it was held therefore that the claim for refund was timely even under the three-year statute. The Court had no occasion whatever to pass on the four-year statute and its mere reference to the

three-year statute cannot be deemed to be a decision on the question here involved. Moreover, that case involved merely an overpayment of the tax, due to the disallowance of certain deductions, and not to a totally illegal exaction, and was one therefore that was properly referred to as being governed by Section 910.

Whatever may be the rule applicable in the two cases here under review, we believe that it should be made clear that the decision in *In re Tindle's Estate* was correct, thus avoiding the necessity of another review by this Court in the case of *Fawcett v. United States of America*.

The undersigned respectfully requests permission to file this brief, copies of which have been delivered to counsel in the two cases before the Court and to counsel for the government in the case of *Fawcett v. United States of America*.

Dated, San Francisco, California,
November 7, 1947.

REGINALD S. LAUGHLIN,
Amicus Curiae.

We hereby consent to the filing of the above brief and admit service of a copy thereof.

Attorneys for Petitioner in No. 70.

Attorneys for Respondent in No. 70.

Attorney for Petitioner in No. 71.

Attorney for Respondent in No. 71.